IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.120 OF 2005

The Commissioner of Central Excise ..Appellant.

V/s.

M/s.KDL Biotech Ltd. ..Respondent.

Mr.K.R.Chaudhary with K.D. Rao for appellant.

Mr.Naresh Thacker for respondents.

CORAM : Dr.S.RADHAKRISHNAN & J.P.DEVADHAR, JJ.
DATED : 31TH JANUARY, 2006.

P.C. :-

Heard learned counsel for the appellant and the respondents. Appellant has sought to raise certain questions of law. However, on a perusal of the order of the CESTAT dated 9th September, 2004 especially paragraph No.2, it is clear that the respondent has paid the requisite duty initially and had exported the goods. But since the export order was cancelled, the goods were brought back to the factory. Thereafter, the respondents again cleared those goods by paying the duty second time and sold the goods. The above is a clear finding of fact recorded in the said order of the CESTAT. It is not the case of the Department that the goods cleared for the second time were not the same goods initially cleared or that they were different goods. In that view of the matter, we do not find anything wrong in the order of the CESTAT that the respondent is entitled to the refund of the duty. There is no substantial question of law involved in this matter. Appeal stands dismissed in limine with no order as to costs.

(J.P.DEVADHAR, J.) **(Dr.S.RADHAKRISHNAN,J.)**